IN THE

Supreme Court of the United States

No. 138, Original

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

STATE OF NORTH CAROLINA,

Defendant.

On Bill of Complaint

ANSWER

Duke Energy Carolinas, LLC ("Duke") files the following answer to the Complaint filed by the State of South Carolina:

1. Admitted.

2. Admitted that the Catawba River is essential as set forth in the first sentence of this paragraph. Duke lacks sufficient knowledge to admit or deny the remaining allegations in this paragraph.

3. Admitted that North Carolina enacted an interbasin transfer statute in 1991. That statute has since been repealed and a different one adopted. Duke lacks sufficient knowledge to admit or deny the remaining allegations in this paragraph.

4. Duke lacks sufficient knowledge to admit or deny the allegations in this paragraph.

5. Admitted.

6. This paragraph states a legal conclusion that Duke is not required to admit or deny.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Duke lacks sufficient knowledge to admit or deny the allegations in this paragraph.

13. Duke lacks sufficient knowledge to admit or deny the allegations in this paragraph.

14. Admitted that a multi-stakeholder negotiation process occurred involving Duke and groups from North and South Carolina, and that the negotiations resulted in an agreement about the minimum continuous flow into South Carolina from the Catawba River. Denied that the Federal Energy Regulatory Commission was a stakeholder in this process. Denied that 1,100 cubic feet per second was agreed to be the minimum continuous flow that South Carolina should receive. Duke lacks sufficient knowledge to admit or deny the remaining allegations in this paragraph.

15. Admitted that the Appendix documents cited support the factual allegations set forth in this paragraph. Duke lacks sufficient knowledge to admit or deny the remaining allegations in this paragraph.

16. Admitted that Duke has developed a model to estimate the flow of the Catawba River. Duke denies the characterizations of the model and what it shows on the ground that they are incomplete.

17. Admitted that the Catawba River has been subjected to prolonged droughts. Duke lacks sufficient knowledge to admit or deny the remaining allegations of this paragraph.

18. Admitted that North Carolina enacted an interbasin transfer statute in 1991. That statute has since been repealed and a different one adopted. Duke lacks sufficient knowledge to admit or deny the remaining allegations of this paragraph.

19. Denied. The statute referred to has been repealed and a new interbasin transfer statute has been enacted. Duke states that both the statute described in this paragraph and the new statute speak for themselves, and therefore that Duke is not required to admit or deny the allegations in this paragraph.

20. Admitted that the North Carolina EMC granted the permits described in this paragraph. Duke lacks sufficient knowledge to admit or deny the remaining allegations of this paragraph.

21. Duke states that the first sentence of this paragraph states a legal conclusion that Duke is not required to admit or deny. Duke lacks sufficient knowledge to admit or deny the remaining allegations in this paragraph.

22. Duke lacks sufficient knowledge to admit or deny the allegations of this paragraph.

23. Duke lacks sufficient knowledge to admit or deny the allegations of this paragraph.

24. Duke lacks sufficient knowledge to admit or deny the allegations of this paragraph.

25. Duke states that this paragraph states a legal conclusion that Duke is not required to admit or deny.

26. Duke states that the documents described in this paragraph speak for themselves and therefore that Duke is not required to admit or deny the allegations in this paragraph.

27. Duke states that the documents described in this paragraph speak for themselves and therefore that Duke is not required to admit or deny the allegations in this paragraph.

28. Admitted that the application for a transfer was granted in part. Duke states that the documents described in this paragraph speak for themselves and therefore that Duke is not required to admit or deny the remaining allegations in this paragraph.

29. Admitted that the EMC did not act as recommended in the resolution described. Duke states that the documents described in this paragraph speak for themselves and therefore that Duke is not required to admit or deny the remaining allegations in this paragraph.

FIRST AFFIRMATIVE DEFENSE

Duke's current FERC License, application for New License, Comprehensive Relicensing Agreement, which is a part of Duke's application, and the New License to be issued, including their terms involving minimum flow requirements, and other interests governed by the Federal Power Act must be given significant weight in equitably apportioning the waters of the Catawba River between North and South Carolina.

WHEREFORE, Duke prays:

1. That its interests, including the interests arising out of and related to the FERC License, be protected by any decree of this Court equitably apportioning the Catawba River;

2. That this Court's equitable apportionment of the Catawba River protect Duke's riparian interests in the Catawba River flow and its interests in the excess water created by Duke's impoundments.

3. For such other and further relief as the Court may deem proper.

Respectfully submitted,

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